

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SAFECO INSURANCE COMPANY OF  
AMERICA,

Plaintiff,

v.

PAUL BETENBAUGH, et al.,

Defendants.

No. 2:21-cv-01761-TLN-CKD

**ORDER**

This matter is before the Court on Plaintiff Safeco Insurance Company of America's ("Plaintiff") Administrative Motion for Leave to File a Motion for Summary Judgment. (ECF No. 55.) Defendant Paul Betenbaugh ("Defendant") filed an opposition. (ECF No. 58.) Plaintiff filed a reply. (ECF No. 59.) For the reasons set forth below, the Court DENIES Plaintiff's motion.

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1           **I.       FACTUAL AND PROCEDURAL BACKGROUND**

2           The Court need not provide a detailed factual background of this action, as it was set forth  
3 fully in the Court’s prior order. (ECF No. 40 at 2–4.) In short, this action involves an insurance  
4 coverage dispute. (*Id.* at 2.) Defendant is an insured under a Homeowners Policy and Umbrella  
5 Policy with Plaintiff. (*Id.*) Defendant sought defense coverage under those policies in an  
6 underlying state court action, in which Defendant had been sued for: (1) internet impersonation;  
7 (2) defamation; (3) false light; (4) negligent infliction of emotional distress; and (5) intentional  
8 infliction of emotional distress. (*Id.*) Plaintiff agreed to defend Defendant in the underlying  
9 action, subject to a reservation of rights. (*Id.* at 4.) On September 1, 2021, a jury reached a  
10 unanimous verdict against Defendant in the underlying action. (*Id.*)

11           On September 27, 2021, Plaintiff filed the instant action, alleging: (1) a claim for  
12 declaratory relief that it had no duty to defend Defendant under the Homeowners Policy; (2) a  
13 claim for declaratory relief that it had no duty to indemnify Defendant under the Homeowners  
14 Policy; (3) a claim for declaratory relief that it had no duty to defend Defendant under the  
15 Umbrella Policy; (4) a claim for declaratory relief that it had no duty to indemnify Defendant  
16 under the Umbrella Policy; and (5) a claim for reimbursement of defense fees and expenses.  
17 (ECF No. 1 at 17–22.) Defendant filed his answer on January 21, 2022. (ECF No. 14.)

18           On September 27, 2022, Defendant filed a motion for leave to amend his answer to add  
19 counterclaims and parties to this action. (ECF No. 22.) On October 11, 2022, Plaintiff filed a  
20 motion for summary judgment. (ECF No. 25.) On September 29, 2023, the Court granted in part  
21 and denied in part Plaintiff’s motion for summary judgment and denied Defendant’s motion to  
22 amend his answer. (ECF No. 40.) On June 27, 2024, Plaintiff filed the instant administrative  
23 motion for leave to file a second motion for summary judgment. (ECF No. 55.)

24           **II.       STANDARD OF LAW**

25           The Ninth Circuit has held that “district courts have discretion to permit successive  
26 motions for summary judgment,” and that doing so may “foster[ ] the ‘just, speedy, and  
27 inexpensive’ resolution of suits.” *Hoffman v. Tonnemacher*, 593 F.3d 908, 911 (9th Cir. 2010)  
28 (citations omitted). However, due to the potential for abuse, district courts retain discretion to

1 “weed out frivolous or simply repetitive motions.” *Id.* (citing *Knox v. Sw. Airlines*, 124 F.3d  
2 1103, 1106 (9th Cir. 1997)). “[A] successive motion for summary judgment is particularly  
3 appropriate on an expanded factual record.” *Id.*

### 4 III. ANALYSIS

5 Plaintiff seeks leave to file a second motion for summary judgment to “raise new legal  
6 issues” that were not decided in the Court’s prior order. (ECF No. 55 at 3.) In its prior order, the  
7 Court found there was no duty to defend under the Homeowners Policy because that policy only  
8 provided coverage for damage caused by an “occurrence,” which was clearly defined in the  
9 policy as “an accident.” (ECF No. 40 at 10–11.) Because the Court found the occurrence at issue  
10 in the underlying action was not an accident, the Court found there was no coverage under the  
11 Homeowners Policy. (*Id.* at 11.) However, the Court was unable to reach the same conclusion as  
12 to coverage under the Umbrella Policy because that policy defined “occurrence” differently than  
13 the Homeowners Policy. (*Id.*) Unlike the Homeowners Policy which defined an “occurrence”  
14 only as an “accident,” the Umbrella Policy defined an “occurrence” as *either* an “accident” *or* “an  
15 offense, committed during the coverage period, which results in personal injury.” (*Id.*)  
16 Defendant pointed out this distinction in his opposition to the motion for summary judgment and  
17 Plaintiff seemingly acknowledged the oversight and offered new argument on the issue in its  
18 reply. (*Id.*) The Court declined to consider Plaintiff’s argument raised for the first time in reply,  
19 noting that Plaintiff offered no reason why it failed to make the argument sooner. (*Id.*) Based on  
20 Plaintiff’s failure to adequately raise the issue in its moving papers, the Court was unable to  
21 conclude as a matter of law whether Plaintiff had a duty to defend under the Umbrella Policy and  
22 denied Plaintiff’s motion for summary judgment on that claim. (*Id.*)

23 Plaintiff’s motion for leave to file a second motion for summary judgment apparently  
24 seeks to remedy its previously inadequate briefing on the issue of whether there is coverage under  
25 the alternative definition of “occurrence” in the Umbrella Policy. (ECF No. 55 at 3.) Plaintiff  
26 argues that allowing it to file a motion for summary judgment on this purely legal question is in  
27 the interest of judicial economy because it will potentially resolve the entire action. (*Id.* at 3–5.)  
28 In opposition, Defendant argues Plaintiff’s motion improperly seeks reconsideration of the prior

1 order, successive motions for summary judgment are generally disfavored, and Plaintiff failed to  
2 provide proper notice under Local Rule 230(b). (ECF No. 58 at 2–6.)

3 Plaintiff titles its motion as an “administrative motion.” (ECF No. 55 at 1.) However,  
4 Plaintiff’s motion is devoid of any citation to the Federal Rules of Civil Procedure or this Court’s  
5 Local Rules that would permit this type of motion. For the first time in reply, Plaintiff argues the  
6 motion is brought pursuant to Local Rule 233. (ECF No. 59 at 2.) Eastern District of California  
7 Local Rule 233 states,

8 Miscellaneous administrative matters which require a Court order  
9 may be brought to the Court’s attention through a motion for  
10 administrative relief. Examples of matters that such motions may  
11 address include motions to exceed applicable page limitations;  
12 requests to shorten time on a motion; requests to extend a response  
deadline; requests to alter a briefing schedule; or requests to alter a  
discovery schedule that does not affect dispositive motion filing  
dates, trial dates, or the final pre-trial conference.

13 Plaintiff’s motion does not fit into one of the delineated examples of proper motions for  
14 administrative relief. As such, Plaintiff fails to persuade the Court that its administrative motion  
15 is the proper vehicle for seeking leave to file a second motion for summary judgment.

16 Plaintiff’s motion also ignores that the dispositive motion deadline, as set forth in the  
17 Pretrial Scheduling Order, has long passed. (ECF No. 4 at 4.) The parties have not stipulated to  
18 modify the dispositive motion deadline, nor has Plaintiff filed a properly noticed motion to do so  
19 under Federal Rule of Civil Procedure (“Rule”) 16. (*See id.* at 7 (setting forth the procedure for  
20 modification of the Pretrial Scheduling Order).) A Rule 16 motion, which involves a showing of  
21 good cause, appears to be a prerequisite to consideration of Plaintiff’s motion for leave to file a  
22 motion for summary judgment after the dispositive motion deadline. *See Hoffman*, 593 F.3d at  
23 912 (“The district court’s decision to allow Defendant to file another motion for summary  
24 judgment . . . required the district court first to modify the pretrial order.”); *see also Johnson v.*  
25 *Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992) (stating that “Rule 16(b)’s ‘good  
26 cause’ standard primarily considers the diligence of the party seeking the amendment” and  
27 “carelessness is not compatible with a finding of diligence”). Not only does Plaintiff’s motion  
28 fail to address Rule 16, but the Court is also unable to glean any arguments from Plaintiff’s

1 motion as to whether there is good cause to modify the dispositive motion deadline. *See San*  
2 *Diego Cnty. Credit Union v. Citizens Equity First Credit Union*, No. 18-CV-967-GPC-RBB,  
3 2020 WL 6685034, at \*2 (S.D. Cal. Nov. 12, 2020) (“[A]bsent a showing of good cause, the  
4 Court denies [Defendant’s] ex parte motion to file a second dispositive motion.”).

5 Even if the Court was able to look past the foregoing deficiencies, the Court ultimately  
6 declines to exercise its discretion to grant Plaintiff leave to file a second motion for summary  
7 judgment. “A renewed or successive summary judgment motion is appropriate especially if one  
8 of the following grounds exists: (1) an intervening change in controlling law; (2) the availability  
9 of new evidence or an expanded factual record; and (3) [the] need to correct a clear error or  
10 prevent manifest injustice.” *Brazill v. Cal. Northstate Coll. of Pharmacy, LLC*, No. CIV. 2:12-  
11 CV-1218-WBS, 2013 WL 4500667, at \*1 (E.D. Cal. Aug. 22, 2013) (citation omitted). Plaintiff  
12 does not argue that any of those circumstances exist in the instant case. Instead, Plaintiff merely  
13 argues it would be in the interest of judicial economy to allow a second motion for summary  
14 judgment on the sole remaining legal issue because it would potentially avoid the need for trial.  
15 (ECF No. 55 at 4–5.) It is unclear whether it would be significantly more efficient to allow a  
16 second motion for summary judgment rather than proceed to trial. Moreover, Plaintiff fails to  
17 persuade the Court that the interest of judicial economy should excuse Plaintiff from failing to  
18 adequately raise the issue in its original motion for summary judgment — especially considering  
19 that Plaintiff has made no effort to explain its failure to do so.

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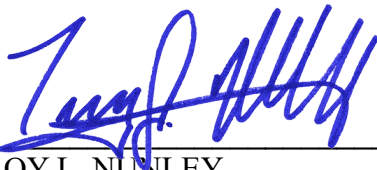
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**IV. CONCLUSION**

For the foregoing reasons, the Court DENIES Plaintiff's Administrative Motion for Leave to File a Motion for Summary Judgment. (ECF No. 55.) The parties are ORDERED to file a Joint Status Report within thirty (30) days of the electronic filing date of this Order indicating their readiness to proceed to trial and proposing trial dates. The Joint Status Report should include dates counsel are available for trial, the estimated length of trial, and whether the parties intend to proceed with a bench trial or jury trial.

IT IS SO ORDERED.

DATED: January 17, 2025



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TROY L. NUNLEY  
CHIEF UNITED STATES DISTRICT JUDGE